

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION**

The United States of America for the Use and
Benefit of Legacy Fence, LLC,

Plaintiff,

v.

ML Builders, LLC, and Unknown Surety
Company A,

Defendants.

Case No. 1:23-cv-03008-MGL

COMPLAINT

(Jury Trial Demanded)

The Use Plaintiff, Legacy Fence, LLC (“Legacy”), complaining of the Defendants ML Builders, LLC (“ML Builders”), and Unknown Surety Company A (“Surety”) alleges as follows:

1. This action is brought pursuant to Title 40 U.S.C. § 3131, *et. seq.*, commonly referred to as the Miller Act.

2. This Court has jurisdiction over the subject matter of this action pursuant to provisions of the Miller Act.

3. Pursuant to the Miller Act’s venue provision, 40 U.S.C. § 3133(b)(3), venue is proper in this Court because the subcontract at issue in this action was to be performed within this district. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Plaintiff Legacy’s claims occurred on property that is situated in this district.

4. The Use Plaintiff, Legacy, is a South Carolina limited liability company with its principal place of business in Saluda, South Carolina.

5. The Defendant Surety is, upon information and belief, a compensated surety that issued Miller Act payment bonds required by a contract ML Builders had with Savannah River

Nuclear Solutions (“SRNS”) for infrastructure improvements to be completed at the Savannah River Site.

6. Despite requests to Defendant ML Builders for a copy of the prime contract and the identity of Defendant Surety, Defendant ML Builders has not provided the requested information. This Complaint will be amended to name the proper surety company once Plaintiff Legacy receives the necessary information through discovery or other means.

7. The Defendant ML Builders is, upon information and belief, a South Carolina limited liability company with its principal place of business in Greenville, South Carolina. Defendant ML Builders contracted with SRNS for infrastructure improvements to the Savannah River Site.

8. The Savannah River Site is a U.S. Department of Energy reservation located in the State of South Carolina in Aiken, Allendale, and Barnwell Counties.

9. The Savannah River Site is owned by the U.S. Department of Energy.

10. Upon information and belief, the United States has entered into a contract with SRNS for the performance of certain work at the Savannah River Site.

11. Upon information and belief, on July 19, 2022, the United States, through SRNS, awarded a contract (the “Prime Contract”) to Defendant ML Builders for fence construction and maintenance at the Savannah River Site. Upon information and belief, the value of the award was in excess of \$225,000.

12. Upon information and belief, the amount of the surety bond held by Defendant Surety meets or exceeds the amount of Prime Contract, as required by law.

13. Following the award of the Prime Contract to Defendant ML Builders, Plaintiff Legacy and Defendant ML Builders entered into a subcontract agreement (“Subcontract”) under which Plaintiff Legacy agreed to supply labor and materials for fence construction and maintenance at the Savannah River Site.

14. The Subcontract expressly provides that Defendant ML Builders shall pay Plaintiff Legacy “the Subcontract Sum of (\$140,320.00).”

15. The Subcontract also expressly provides that Legacy is entitled to a copy of the Prime Contract, if requested of ML Builders. Legacy has requested a copy of the Prime Contract from ML Builders, which, upon information and belief, would reflect the identity of the surety, but ML Builders has refused or otherwise failed to provide a copy of the Prime Contract.

16. Defendant ML Builders and Plaintiff Legacy never agreed to any modifications, additions, or deductions to the Subcontract.

17. To date, Defendant ML Builders has not paid any amount to Plaintiff Legacy despite repeated demands for payment.

18. All work under the contract was performed at the Savannah River Site.

**FOR A FIRST CAUSE OF ACTION
(Miller Act Bond Action)**

19. Plaintiff Legacy realleges the above allegations as if repeated verbatim herein.

20. Plaintiff Legacy last rendered services and supplied materials to the project in December 2022.

21. Plaintiff Legacy furnished labor, materials, services, and equipment under the Subcontract more than ninety days prior to the filing of this action.

22. Plaintiff Legacy furnished labor, materials, services, and equipment under the Subcontract within the year immediately preceding the date of filing this action.

23. Plaintiff Legacy is due \$140,320.00 under the Subcontract.

24. Plaintiff Legacy has demanded payment from ML Builders.

25. Plaintiff Legacy has been unable to demand payment from Defendant Surety because Defendant ML Builders has not provided the identity of the surety company to Plaintiff Legacy or a

copy of the Prime Contract. Upon receiving the identity of the surety, through discovery or otherwise, Plaintiff Legacy will make that demand and amend this Complaint.

26. Defendant ML Builders and Defendant Surety, as principal and surety on the Miller Act payment bonds, are liable to Plaintiff Legacy for the amount due of \$140,320.00 plus pre-judgment interest.

**FOR A SECOND CAUSE OF ACTION
(Recovery of Attorney Fees)**

27. Plaintiff Legacy realleges the above allegations as if repeated verbatim herein.

28. Demand has been made upon Defendant ML Builders pursuant to S.C. Code § 27-1-15.

29. More than forty-five days have passed since the mailing of Plaintiff Legacy's demand letter to Defendant ML Builders.

30. Defendant ML Builders has failed to conduct a reasonable investigation and to pay all undisputed amounts.

31. Upon proper identification of Defendant Surety, Legacy will make a demand as required by S.C. Code § 27-1-15. Defendant Surety will have time to conduct a reasonable investigation and pay all undisputed amounts but will be liable if it fails to pay the undisputed amounts.

32. Plaintiff Legacy is entitled to attorney's fees, interest, and costs pursuant to S.C. Code § 27-1-15.

**FOR A THIRD CAUSE OF ACTION
(Breach of Contract)**

33. Plaintiff Legacy realleges the above allegations as if repeated verbatim herein.

34. Defendant ML Builders' failure to pay Plaintiff Legacy for the work performed is a breach of contract.

35. Defendant ML Builders' failure to provide a copy of the Prime Contract is a breach of contract.

36. Based on ML Builders' breach of contract, Plaintiff Legacy is entitled to \$140,320.00.

WHEREFORE, the Use Plaintiff, Legacy, prays for judgment against the Defendants in the amount of \$140,320.00, together with attorney's fees, prejudgment interest, and the costs and disbursements of this action and for other such and further relief as the Court deems just and proper.

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June 26, 2023

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